IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.Revision No.68 Of 2001.
Judgment Reserved on: 25.05.2007.
Date of decision: June Ist, 2007.

Bir Singh. ……. Petitioner.

Vs.

Dharminder Singh & Another. ……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the petitioner: Mr.Ramakant Sharma, Advocate.

For the respondents: Mr.Vinay Thakur, Advocate, vice Mr. T.R. Chandel, Advocate.

Surinder Singh, J:

The instant revision petition has been directed by the petitioner, feeling aggrieved by and dissatisfied with the order dated 7th February, 2001 passed in a case No.143-I/2000, by the Judicial Magistrate Ist class, whereby his complaint under Sections 420, 467, 468, 470, 471 and 120-B of the Indian Penal Code was dismissed.

In brief, the relevant facts which are noticed from the record of the trial court are that the petitioner was a member of ***Damtal Truck Operators Union*** in the year 1998. The name

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Whether reporters of local Papers may be allowed to see the judgment? Yes

of such Union was changed under the Chairmanship of Chaudhary Milkhi Ram from Damtal Truck Owners Union to **the *Public Truck Operators Union*** in the year 1998. In the same meeting, it was decided that the Union will file a case against Rajpal Singh and others. The working Pradhan i.e. respondent No.1 obtained the signatures of all the members on the blank judicial papers and one of the blank judicial papers was duly signed by the executive member was used by fabricating the agreement to file a civil suit against Jassur Truck Union. Respondent no.1, in collusion with respondent No.2. had prepared and fabricated a false agreement dated 25.5.1997, on the blank judicial papers to get a favourable order in the stay application in civil suit no:204/2000. The complaint was presented on 22.9.2000. The petitioner produced the preliminary evidence. Besides examining himself, he had produced Inderjeet Mahajan. After considering the matter, the trial court dismissed the complaint mainly on the ground of its maintainability. The relevant portion of the order is extracted as under:-

> **"The gist of the complaint and arguments put forth by complainant's counsel clearly put this case within the ambit of section 192 of Indian Penal Code. Since the document which is made main basis of this complaint is under scrutiny of civil court and no final opinion has been made by court as civil suit is on its initial stages. Moreover the provision of Section 195 Cr.P.C. is also attracted to present complaint.**
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> **So in view of above discussion and keeping in view facts and circumstances of the case, the court is of**

view that present complaint is premature and not maintainable now, hence the present complaint is dismissed."

It is this order, which has been assailed in this petition on law and facts.

The matter was admitted for hearing on 14.8.2001 and now it was listed for final hearing.

I have heard the learned counsel for the parties and have gone through the record of the trial Court.

Shri Ramakant Sharma, learned counsel for the petitioner has argued that, the learned trial court has drawn a wrong conclusion for dismissing the complaint in view of the verdict of the apex court reported in (2005) 4SCC 370.

On the other hand, Mr. Vinay Thakur, learned Advocate, for the respondents, has vehemently argued that the learned trial Court has come to the right conclusion on the facts and has also rightly applied the law as attracted in the case, therefore, the impugned order is legal and factually sustainable.

I have thoughtfully considered the rival contentions and have gone through the legal proposition raised before me.

As far as the question of the case falling within the ambit of Section 192 and 195 of the Code Of Criminal Procedure is concerned, the conclusion drawn by the trial court that the document which is made the main basis of the complaint, is under scrutiny of civil court, since no final opinion has been made by the court, the suit being at the initial stage,

the complaint is premature; is incorrect in view of the verdict of the apex court in case **Sachida Nand and another vs State of Bihar and another: (1998)2 SCC 493** whereby it has been held**:-**

"Section 195(1)(b)(ii) CrPC reveals two main postulates for operation of the bar mentioned there. First is, there must be allegation that an offence (it should be either an offence described in Section 463 or any other offence punishable under Sections 471, 475, 476 of the IPC) has been committed. Second is that such offence should have been committed in respect of a document produced or given in evidence in a proceeding in any court. It is undisputed that if forgery has been committed while the document was in the custody of a court, then prosecution can be launched only with a complaint made by that court. Again, if forgery was committed with a document which has not been produced in a court then the prosecution would lie at the instance of any person. A question arises whether in the latter situation production of such document in Court will make any difference. Now, even if the clause is capable of two interpretations the narrower interpretation has to be chosen. Provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise."

The above proposition of law was relied upon by the constitution Bench of the Supreme Court in **Iqbal Singh Marwah and Another** v. **Meenakshi Marwah and Another [(2005) 4 SCC 370]** and after discussing the various rulings their Lordships were of the opinion that Sachida Nand's case has been correctly decided and the view taken therein is the correct view.

Thus, Section 195(1)(b)(ii) Cr.P.C. would only be attracted when the offence enumerated in the said provision has been committed with respect to a document after it has been produced or given in an evidence in a proceeding in any court that is during the time when the document was in custodia legis.

The sequitur of the entire discussion led the apex court to hold that the bar contained in Section 195 (1)(b)(ii) of the Code of Criminal Procedure is not applicable to a case where forgery of the document was committed before the document was produced in a court.

Therefore, the view taken by the trial court is unsustainable to arrive at a conclusion that the complaint was premature without concluding as to when the alleged document was said to have been fabricated.

Looking at the case from this angle there is no material brought on record by the complainant-petitioner. The preliminary evidence also does not make out a case even for the issuance of the process against the respondents. The perusal of the copy of plaint and an application moved under Order 39 Rules 1 & 2 C.P.C. placed on record reveals that a suit was filed by the Public Truck Operators Union, Damtal and others against the New Truck Operators Union, Jassur and others, in the court of Sub Judge Ist Class, Nurpur, seeking permanent injunction, restraining the defendants from interfering in any manner in day-to-day working/ functioning of the plaintiff, i.e. Public Truck Operators Union or from causing

any disturbance or annoyance, nuisance so as to cause interference in the smooth working at the time of Pukar (bid) for allotment of trucks turn wise serially as per register maintain within the precincts of the office of the Union.

The petitioner has not placed on record the interim order to show that the said order was passed on the basis of some agreement as alleged. It is also pertinent to note that there is no reference of the agreement in question in the pleadings filed by the complainant nor it is prima facie made out that the fabricated document was placed before the trial court. Since the allegations made in the complaint were not stated in the preliminary evidence before the trial court, it was not a case, even for issuance of the process to the respondents.

However, for the reasons stated hereinabove, the complainant could not make out a case for issuance of process to the respondent. Hence, the complaint filed by him deserved dismissal outright hence the order dismissal of the complaint is upheld for the reasons mentioned above. Consequently, the instant revision petition stands dismissed.

June Ist, 2007. **(Surinder Singh)**
(PDS) **Judge**.